

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE: EVA VARGOVA

Debtor,

**BK. NO. 5:09bk902
Ch 7**

EVA VARGOVA,

Plaintiff,

v.

AP. NO:5:09ap00044

**SALLIE MAE SERVICING CORP.,
DIRECT LOANS,
and WEST LIBERTY STATE COLLEGE,**

Defendants.

AMENDED ANSWER AND COUNTERCLAIM

Now comes your Defendant, West Liberty University, by counsel, and for its Amended Answer states as follows:

1. With respect to paragraphs 1, 2, and 3, your Defendant is without sufficient knowledge or information to ascertain the truth or the allegations contained therein, and therefore denies the same and demands strict proof thereof.

2. With respect to paragraph 4, your Defendant admits that it is a higher education institution of the State of West Virginia and has a principal operating address of PO Box 295, Chatham Street, West Liberty, WV. Your Defendant further states that on or about May 3, 2009, the name of West Liberty State College changed to West Liberty University. Finally, your Defendant admits that the debt in question was turned over to Unifund for collection, however, said debt has now been returned to the University for further collection. With respect to any remaining allegation in paragraph 4, your Defendant denies the same and demands strict proof thereof.

3. With respect to paragraphs 5, 6 & 7 , your Defendant admits jurisdiction, venue and that this action is a core proceeding.

4. With respect to paragraphs 8 & 9, your Defendant, denies the same and demands strict proof thereof.

6. Your Defendant denies any allegations contained in the Complaint which are not specifically admitted herein.

DEFENSES

1. Your Defendant states that the debt in question is for tuition, room, meal plan and other educational fees associated and therefore was not discharged pursuant to 11 U.S.C. § 523 (a)(8). See Exhibits A, B, C & D.

2. Your Defendant states that permitting a student to attend classes without pre-paying tuition or partial tuition constitutes a nondischargeable loan pursuant to 11 U.S.C. § 523 (a)(8).

3. Your Defendant states that the mere fact the debt is listed in the schedule of debts is not determinative of the dischargeability of the debt. If a student wishes an educational loan discharged, the student bears the burden of filing a complaint in bankruptcy court that one of the exceptions to nondischargeability applies.

4. Your Defendant reserves the right to raise such other defenses as may become apparent during the pendency of this litigation.

COUNTERCLAIM

For its counterclaim, West Liberty University states as follows:

1. This Court has jurisdiction over this counterclaim pursuant to 28 U.S.C. §1334. This adversary proceeding relates to the captioned Chapter 7 bankruptcy case.

2. This counterclaim is a core proceeding.

3. Debtor entered into an agreement to consolidate the amount owed for the Fall 2004, Spring 2005 and Fall 2005 semesters and to repay the debt owed on August 23, 2005. (See Exhibit "A")

4. The unpaid balance is \$ 10, 092.73 (See Exhibit "D")

5. Debtor has previously made a total of \$ 2,400.27 in payment on this account. .73 (See Exhibit "D")

6. Debtor's loan is not dischargeable pursuant to 11 U.S.C. §523(a)(8).

WHEREFORE, West Liberty University, respectfully requests that the Court enter an Order:

1. Declaring the indebtedness to be nondischargeable pursuant to 11 U.S.C. §523(a)(8)

2. Awarding West Liberty University a judgment against the Debtor in the amount of \$ 10,092.73. due on Debtor's debt plus pre and post judgment interest thereon;

4. Granting West Liberty University all other appropriate relief.

Respectfully Submitted,

WEST LIBERTY UNIVERSITY BOARD OF
GOVERNORS/WEST LIBERTY UNIVERSITY,

By Counsel,

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

s//Jendonnae L. Houdyschell
Jendonnae L. Houdyschell / State Bar No. 5809
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West Virginia Higher Education Policy Commission
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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

WEST LIBERTY UNIVERSITY BOARD OF
GOVERNORS/WEST LIBERTY UNIVERSITY,

By Counsel,

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

s//Jendonnae L. Houdyschell
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